IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Court No.3

Civil W.P. No. 1063(M/S)/2003

M/s Vidhyarthi Pustak Bhandar Chowk Bazar Jwaloapur
District Haridwar ….Petitioner.

Vs.

Addl.District Judge/FTC Haridwar & others ….Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri Nagesh Aggarwal, learned counsel for the petitioner and perused the record of the petition.

2- By this petition the legality of the impugned order dated 13.11.1997 contained in Annexure-8 passed by the trial Court on the application paper No. 105-B for leave to amend the plaint as well as the revisional judgment and order dated 20-8-2003 contained in Annexure No. 1 passed by the respondent No.1 have been challenged. The application for amendment of the plaint was moved in order to explain the entry made in the cash credit limit account of the defendant-petitioner with regard to the balance of Rs. 79,360.14 which was outstanding against him in relation to the earlier case credit limit facility availed by the petitioner in the year 1981. Because the petitioner-defendant has challenged the propriety of making debit of the said amount in his account against cash credit limit facility given with effect from 23.12.1983 the learned trial court was of the view that the amendment sought does not change the nature of the claim and further that the plea was not barred by time and the leave to amend the plaint was accordingly allowed. Aggrieved the defendant-petitioner preferred a revision which was dismissed by the order dated 20-8-2003 and this is how the present petition has been filed by the petitioner-defendant.

3- It can not be doubted that there was need to explain the debit entry of the above said amount against the cash credit account of the petitioner-defendant and for this purpose the averment was required to be made in the plaint. The earlier cash credit limit was closed and the outstanding dues appear to have been debited in the fresh cash credit limit facility extended to the petitioner-defendant in the year 1983. Considering the stand taken by

the plaintiff-respondent, the contention of the learned counsel for the petitioner can not be accepted that a new plea was being raised by way of amendment of the plaint. The plea that the recovery of said amount shown outstanding being time barred, the same question need to be considered in the case at the time of the final decision and since the debit entry had already been made in the account the plaintiff was bound to explain the same by making relevant amendment in the plaint.

4- Considering this aspect the two decision of the Apex Court in the cases of *Muni Lal vs. The Oriental Fire and General Insurance Company Ltd. and another; A.I.R. 1996, S.C. page-642 and Radhika Devi vs. Baijrangi Singh and others; AIR 1996 Supreme Court 2358* can not be of any help to the petitioner at this stage and the plea of limitation can be considered at the time of the decision of the suit itself.

5- In view of above there being to be no illegality or impropriety in the impugned orders, the petition is devoid of merit and is dismissed in lime.

Dated: 22-10-2003 **(Irshad Hussain, J.)**

ISB